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Supreme Court, U.S.
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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 338

BLONDER-TONGUE LABORATORIES, INC.,
Petitioner,

vs.

UNIVERSITY OF ILLINOIS FOUNDATION,

AND

JFD ELECTRONICS CORPORATION,
Respondents.

OBJECTION TO MOTION BY THE FINNEY COMPANY FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

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THE GUNTHROP-WARREN PRINTING COMPANY, CHICAGO

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Respondent University of Illinois Foundation objects to the filing by The Finney Company of a brief amicus curiae and presents herewith the following reasons for its refusal to grant consent:

1. The Finney Company is not truly a disinterested friend of the Court but is rather a commercial enterprise with a substantial financial interest in having the Isbell patent declared invalid. Finney has been accused by the Foundation of infringing the Isbell patent and is the declaratory judgment plaintiff in a suit pending in the District Court for the Northern District of Illinois.

2. The issue which Finney seeks to raise, i.e., the relationship between unpredictability and nonobviousness, was presented to this Court in the Foundation's petition for a writ of certiorari to the Court of Appeals for the Eighth Circuit (*University of Illinois Foundation* v. *Wingard Co.*, No. 993, October term, 1968). That petition was denied, but the Foundation has filed a petition for out-of-time rehearing based on the recently created conflict of decisions of the Courts of Appeals regarding the Isbell patent. In the event that the writ of certiorari to the Court of Appeals for the Eighth Circuit is granted, the effect of unpredictability on obviousness will be adequately explored.

3. The question of law presented by The Finney Company is improper and unanswerable as stated. It improperly assumes that every invention achieved "through logical exploration within known principles of the art" is obvious and inquires only whether the "necessity of logical experimentation" is sufficient to overcome the obviousness. The implicit assumption of obviousness is contrary to the guidelines for establishing obviousness or nonobviousness which were set out by this Court in *Graham* v. *John Deere Co.*, 383 U. S. 1, and is further contrary to the Statute (35 U. S. C. § 103: ". . . Patentability shall not be negatived by the manner in which the invention was made").

Respectfully submitted,

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